

**IN THE MISSOURI COURT OF APPEALS
SOUTHERN DISTRICT**

NAYLOR SENIOR CITIZENS HOUSING,)	
LP; MAYLOR SENIOR CITIZENS)	
HOUSING II, LP; and JOHN DILKS,)	
)	Appellate Case No. SD 32098
Appellants,)	
v.)	
)	
SIDES CONSTRUCTION COMPANY, INC.;)	
CITY OF NAYLOR; SCHULTZ)	
ENGINEERING SERVICES, INC.; NAYLOR)	
RII PUBLIC SCHOOLS, and DILLE AND)	
TRAXEL, LLC)	
)	
Respondents.)	

APPEAL FROM THE CIRCUIT COURT OF RIPLEY COUNTY, MISSOURI
THIRTY-SIXTH JUDICIAL CIRCUIT
THE HONORABLE MICHAEL J. LIGONS

**RESPONDENT'S BRIEF:
CITY OF NAYLOR**

Submitted by:

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ARGUMENT

- I. THE TRIAL COURT DID NOT ERR IN DISMISSING PLAINTIFFS' PETITION BECAUSE THE PETITION WAS A NULLITY, IN THAT A NON-ATTORNEY PARTNER CANNOT REPRESENT LIMITED PARTNERSHIPS IN COURT AND THEREFORE CANNOT SIGN A PETITION ON BEHALF OF THE PARTNERSHIPS.

Joseph Sansone Co. v. Bay View Golf Course, 97 W.3d 531, 531 (Mo. App. E.D. 2003).

Unifund CCR Partners v. Kinnamon, WD73547, 2012 WL 2891096 (Mo. Ct. App. July 17, 2012), reh'g and/or transfer denied (Aug. 28, 2012).

Parker v. Unemployment Comp. Comm'n, 358 Mo. 365, 371, 214 S.W.2d 529, 534 (1948).

The issues before the Court have been briefed extensively by the other parties to this appeal. Respondent the City of Naylor, Missouri, joins in Respondents' briefs, including the statements of fact and standards of review stated therein, and writes separately only to emphasize that limited partnerships must be represented by counsel.

The Petition filed and signed by John Dilks on behalf of Appellants Naylor Senior Citizens Housing, L.P., and Naylor Senior Citizens Housing II, L.P., was properly declared a nullity, and therefore had no legal effect. Under Missouri's Uniform Limited

Partnership Law, “[a] limited partnership shall, in the partnership name, sue and be sued, complain and defend in any court of law or equity.” Mo. Ann. Stat. § 359.081 (West). Missouri courts have not addressed whether a limited partnership must be represented by counsel, but an examination of the law regarding corporations and general partnerships suggests that limited partnerships are more like corporations in this manner, and therefore must be represented by counsel.

Corporations are not natural persons and may not represent themselves in legal matters, but must act solely through licensed attorneys. Joseph Sansone Co. v. Bay View Golf Course, 97 W.3d 531, 531 (Mo. App. E.D. 2003). A corporation cannot appear by an officer unless the officer is an attorney. Id. at 531. Indeed, the normal effect of an officer’s unauthorized practice of law is dismissal of the cause of action and treatment of the actions taken as a nullity. Id. “The law is settled that a party to an action in court must be a legal entity, that is either a natural person, an artificial person or a quasi artificial person. No action can be maintained in the name of a plaintiff which has no legal entity.” Parker v. Unemployment Comp. Comm’n, 358 Mo. 365, 371, 214 S.W.2d 529, 534 (1948). “Capacity to sue refers to the status of a person or group as an entity that can sue or be sued.” Unifund CCR Partners v. Kinnamon, WD73547, 2012 WL 2891096 (Mo. Ct. App. July 17, 2012), reh’g and/or transfer denied (Aug. 28, 2012).

Under Missouri’s version of the Uniform Partnership Act, a general partnership is not a legal entity separate from the individual partners. Kelley v. DeKalb Energy Co., 865 S.W.2d 670, 671 (Mo. 1993). Therefore, general partnerships cannot sue or be sued.

Sarasohn & Co., Inc. v. Prestige Hotels Corp., 945 S.W.2d 13, 16 (Mo. Ct. App. 1997).

General partnerships may only sue or be sued using the names of all partners. Unifund CCR Partners v. Kinnamon, WD73547, 2012 WL 2891096,*1-*2. (Mo. Ct. App. July 17, 2012), reh'g and/or transfer denied (Aug. 28, 2012).

Appellants Naylor Senior Citizens Housing, L.P., and Naylor Senior Citizens Housing II, L.P., have capacity to sue, in that Section 359.081 permits both to sue in the name of the limited partnerships. The ability to sue and be sued in the limited partnership name conveys their status as entities separate from their partners. In fact, the legislature specifically added the words “in the partnership name” to Section 359.081 after N.E. & R. P'ship v. Stone, 745 S.W.2d 266 (Mo. Ct. App. 1988), where the court suggested that legislature could add those words to the statute if it desired that meaning. Id. at 267. In this way, limited partnerships hold the same status as corporations as separate legal entities, and are therefore constrained by the same limitations—namely that they cannot be represented by a partner or member and must be represented by counsel. Here, only one partner, John Dilks, signed the Petition. L.F. 11. Via timely motions to dismiss, Respondents challenged the Petition on the grounds that Dilks was not a proper party and, as a non-attorney, could not represent the partnerships. L.F. 24-27; Resp. Br.

The trial court appropriately dismissed Appellants because the petition filed on their behalf was considered a nullity. L.F. 70. The case law above demonstrates that the limited partnerships have capacity to sue, but that individual partners cannot represent the partnerships or file a petition on their behalf. Accordingly, for the reasons stated above

and those stated in Respondents' briefs, this Court should affirm the trial court's dismissal of Appellants' claims.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 84.06(b), (c) and (g)

COMES NOW Matt Cologna of Baird, Lightner, Millsap & Harpool, P.C., of lawful age and having been duly sworn, states that this Respondent's Brief: City of Naylor, Missouri, complies with the limitations contained in Supreme Court Rule 84.06(b), 84.06(c) and 84.06(g). The signature block of this Brief contains the information required by Rule 55.33(a).

I further state that the number of words contained in this brief are 1,352 and that this Brief was prepared with and formatted in Microsoft Word format. There are no lines of mono-spaced type in the brief.

/s Matt Cologna
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CERTIFICATE OF SERVICE

COMES NOW Matt Cologna of Baird, Lightner, Millsap & Harpool, P.C., states that, pursuant to Rule 84.06(g), the Respondent's Brief on behalf of City of Naylor was transmitted electronically via the Court's ECF system to counsel listed of record on the 10th day of December, 2012.

Respectfully submitted,

BAIRD, LIGHTNER, MILLSAP & HARPOOL, P.C.

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